REMARKS

Claims 1-30 are presented for examination. Claims 1-5, 7-14, 16-20, 22, and 24-30 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Rose in view of Bailey Jr. et al. Dependent claims 8, 15, 21 and 23 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Rose and Bailey Jr. in view of Weaver.

Independent claims 1, 14 and 27 have been amended to more clearly define the invention over the prior art.

In particular, independent method claim 14, as amended, recites a method of selling goods, comprising the steps of:

-selecting human models representing categories of a pre-set classification of goods,

-trying on the goods by the human models of the respective categories, at least one model is assigned for trying on goods that belong to a category of the classification,

-evaluating the goods, which are tried on, to determine an evaluation mark indicating whether a particular item is suitable to the model that wears the item,

-obtaining individual characteristics of a customer to determine to which category in the pre-set classification the customer belongs,

-determining evaluation marks for the goods in the category to which the customer belongs,

-pre-selecting a group of items based on the evaluation marks, and

-enabling the customer to access said group of items.

The Examiner admits that Rose does not disclose pre-selecting a group of items based on evaluation made when the goods are tried on by a human model, as claim 14

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requires. Bailey Jr. et al. is relied upon for disclosing an online shopping systems wherein human models try on clothing (the last paragraph of p. 6 and the first paragraph of p. 7).

Considering Bailey Jr. et al., the reference discloses a website for selling **custom-tailored** clothing (see the first full paragraph in the last column of page 6). The website gives access to a variety of catalogues containing clothes in various styles. Clothing is projected as a 3D model that can be rotated. Video and sound clips are available to display and describe the clothing on human models with varying physical characteristics. This display allows the customer to gain a better idea of how the clothing might look on them (the paragraph bridging pages 6 and 7).

Accordingly, Bailey Jr. et al. does not teach or suggest selecting human models representing categories of a pre-set classification of goods, where at least one model is assigned for trying on goods that belong to a category of the classification. Instead, the reference suggests showing the clothing on "human models with varying physical characteristics."

Also, the reference does not suggest evaluating the goods, which are tried on, <u>to determine an evaluation mark indicating whether a particular item is suitable to the model that wears the item</u>. Instead, the customers are enabled "to gain a better idea of how the clothing might look on them."

Further, the reference does not suggest obtaining individual characteristics of a customer <u>to determine to which category in the pre-set classification the customer belongs</u>. Instead, the customer is asked to make body measurements to create "an appropriately proportioned computer generated model."

Finally, Bailey Jr. et al. does not suggest:

-determining evaluation marks for the goods in the category to which the customer belongs,

-pre-selecting a group of items based on the evaluation marks, and

-enabling the customer to access said group of items.

It is noted that Bailey Jr. et al. teaches away from the claimed invention thereby constituting further **evidence of nonobviousness**. *In re Bell*, 991 F.2d 781, 26 USPQ2d 1529 (Fed. Cir. 1993); *In re Hedges*, 783 F.2d 1038, 228 USPQ 685 (Fed. Cir. 1986); *In re Marshall*, 578 F.2d 301, 198 USPQ 344 (CCPA 1978).

In particular, as discussed above Bailey Jr. et al. discloses selling **custom-tailored** clothing using video clips that displays clothing on human models. Then, based on particular physical characteristics of a customers such as body measurements, "the resulting garment is presented for inspection on an appropriately proportioned computer generated model" (the first full paragraph on page 7).

Hence, instead of using human models for evaluating goods in order to pre-select a smaller group of items for customer's consideration, Bailey Jr. et al. suggests using video clips as a replacement of a regular fashion show featuring models.

It is noted that Rose also does not disclose the claimed steps. Rose discloses a method of manual fashion shopping by a customer using a video device. The method comprises receiving the customer's body measurements, and providing a database including graphic images of clothing items. The database enables the customer to select a clothes item among all items for each fashion category. The shopping system determines a size of the customer, and outputs the closest size to the computer screen or printer. For this size, the

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system generates a virtual mannequin of the customer's body, which shows the customer how a selected fashion will fit and look.

Hence, Rose et al. does not suggest evaluating the goods, which are tried on in advance, to determine an evaluation mark indicating whether a particular item is suitable to the model that wears the item, in order to pre-select a group of items based on the evaluation marks.

Accordingly, a combination of Rose et al. with Bailey Jr. et al. would not suggest evaluating the goods, which are tried on in advance, to determine an evaluation mark indicating whether a particular item is suitable to the model that wears the item. Also, the reference combination would not suggest pre-selecting a group of items based on the evaluation marks to enable a customer to electronically select a required item among items of a smaller group pre-selected based on the evaluation marks, as claim 14 requires.

Instead, both references disclose obtaining customer's body measurements to create a computer model showing a selected item. The references suggest selecting a required item among all available items rather than among items of a smaller pre-selected group.

Independent apparatus claim 1 has been amended to recite a system for selling goods, comprising an electronic device configured to:

-obtain individual characteristics of a customer to determine to which category in a pre-set classification of goods the customer belongs,

-for the goods in the category to which the customer belongs, determine evaluation marks based on an evaluation made when the goods were tried on by a human model having individual characteristics representing characteristics of the customer,

-pre-select a group of items based on the evaluation marks, and

-enable a customer to access said group of items.

As demonstrated above, the combination of applied references would not suggest an electronic device configured to obtain individual characteristics of a customer to determine to which category in a pre-set classification of goods the customer belongs, determine evaluation marks based on an evaluation made when the goods were tried on by a human model having individual characteristics representing characteristics of the customer, pre-select a group of items based on the evaluation marks, and enable a customer to access this group of items, as claim 1 requires.

Independent claim 27 has been amended to recite a retail system comprising:

a plurality of retail facilities for selling pre-ordered food products, and

an ordering mechanism for enabling customers to order clothes items, together with the food products, for delivery at a designated retail facility of the plurality of retail facilities,

the ordering mechanism including an electronic device configured for pre-selecting for a customer a group of clothes items based on a result of evaluation made when the items were tried on by a human model having individual characteristics representing characteristics of the customer, and enabling the customer to access this group of items.

As discussed above, the reference combination would not suggest the electronic device configured in the manner recited in claim 27.

Moreover, the references of record would not suggest a plurality of retail facilities for selling pre-ordered food products, and an ordering mechanism for enabling customers to order clothes items, together with the food products, for delivery at a designated retail facility of the plurality of retail facilities.

The Examiner takes the position that it is common in the art for retail facilities to sell both food products and clothing. However, it is respectfully submitted that claim 27 does not recite selling both food products and clothing. Instead, the claim recites ordering clothes items, together with the food products, for delivery at a designated retail facility.

It is submitted that known retail facilities do not enable ordering clothes items, together with the food products, for delivery at a designated retail facility.

It is well settled that the test for obviousness is what the combined teachings of the references would have suggested to those having ordinary skill in the art. *Cable Electric Products, Inc. v. Genmark, Inc.*, 770 F.2d 1015, 226 USPQ 881 (Fed. Cir. 1985). In determining whether a case of prima facie obviousness exists, it is necessary to ascertain whether the prior art teachings appear to be sufficient to one of ordinary skill in the art to suggest making the claimed substitution or other modification. *In re Lalu*, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1984).

As demonstrated above, the combined teachings of Rose and Bailey Jr. et al. are not sufficient to arrive at the inventions recited in claims 1, 14 and 27. Hence, the subject matter of claims 1, 14 and 27 is not obvious within the meaning of 35 U.S.C. 103.

The dependent claims 2-13, 15-26 and 28-30 are defined over the prior art at least for the reasons discussed above in connection with the respective independent claims. However, the references or record are not sufficient to suggest features recited in these claims.

In view of the foregoing, and in summary, claims 1-30 are considered to be in condition for allowance. Favorable reconsideration of this application, as amended, is respectfully requested.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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